IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO :28519 of 1996

DATED: 27.6.2007

Between:

U. Annapuran Prasad and ors
petitioners

And

The AP Housing Board,
Rep by its Chairman,
Gruhakalpa, Hyderabad and another Respondents

THE HON'BLE MR JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO :28519 of 1996

ORAL ORDER:

The present writ petition has been instituted seeking the following relief;

> "….declare the action of the 1st respondent Board in escalating the cost of MIG-I houses in phase-IV and V of A.P Housing Board Colony, situate at Kallurpalli, Nellore district from Rs. 1,50,000/- to Rs.2,35,000/- as arbitrary, illegal and unjust by issuing any appropriate writ, order or direction…."

The gravamen of the claim is that the A.P. Housing Board cannot go on escalating the costs of the houses which it intended to construct and convey in favour of the allottees. The said cost in escalation is sought to be justified on the ground that Regulation 23 of the A.P. Housing Board (Allotment, Management and Sale of Middle Income Group Houses) Regulations, 1975, authorizes the A.P. Housing Board to escalate the cost price of the units. The same reads as under:

> "23 (1) The estimated cost price of a house shall comprise of—
> (i) The cost of land;
> (ii) The cost of development which shall include external amenities such as formation of roads, provision of dust proof surfacing, open space, parks, play grounds, etc., and laying of mains for water supply, drainage and

electricity and places for community use, etc;

(iii) The cost of civil works;

(iv) The cost of internal amenities such a Water supply, drainage and electricity;

(v) Supervision charges on construction and provision of amenities etc., at such rates as the Board may fix from time to time; and

(vi) Interest at such rate and for such period as may be fixed by Board on the total of clauses (i) and (iv) from the date of drawl of loan for construction of the house.

(2) Notwithstanding anything contained in the notices inviting application or the agreement executed by the allottee, if after receipt of final bills for the construction houses or payment of interest on the amount of loans taken for construction of such houses or after final determination of the cost of land, and development of land or for expenditure incurred for supervision the Chairman or any office authorized by him in that behalf considers it necessary to revise the estimated cost price, already specified in the notice or agreement, he may do so and determine the final costs price payable on allotment and all allottees in relation to the houses of aforesaid shall be bound by such determination and they shall pay the difference if any between the final cost price as determined and the price paid by them including price paid in lumpsum.

Provided that it shall be open to the Vice Chairman and Housing Commissioner, Andhra pradesh Housing Board to call upon the allottee, through a notice to pay a particular amount, over and above the initial deposit or instalments already paid or payable to meet the escalation in the cost and price (either due to increase in the cost of labour or materials etc., or due to delay in the execution of the scheme or even otherwise) pending the determination of final cost price before a particular date specified in the notice. The Vice Chairman and Housing Commissioner shall have the discretion to issue, any such notice, at any time either during the execution or after the completion of the scheme. Any failure to pay the amount specified in the notice shall entail cancellation of the allotment and resumption of the premises…."

When a similar question engaged the attention of this Court in reported judgment in ***M.V.B. Sarma and others Vs. Andhra Pradesh Housing Board***[1], this issue has been concluded in the following manner;

" It is nobody's case that the Housing Board took into

consideration any factors other than the factors mentioned in Regulation 23 itself in estimating the cost price. It is true, sub clause (3) of Regulation 23 says that final fixation of sale price should be done within two years from the date of allotment of the house. But at the same time, it also provides for extension of period by the Government in case where the final cost cannot be fixed within the prescribed period because the matters relating to land compensation for payment and the final bills to the contractors are pending in the Court. The power is given to the Government to extend the period for final fixation of sale price. In my considered opinion, the prescribed period of two years is not mandatory. Sub clause (3) of Regulation 23 cannot be held to be a mandatory one. It does not prescribe any consequences, if the final fixation of sale price is not done within two years from the date of allotment of the houses. On the other hand, the very fact that the provision is made for extension of the period by the Government would make it clear that the provision is not a mandatory one. At any rate, in the instant case, there is no plea that the Housing Board did not obtain the requisite extension from the Government. The affidavit filed by the petitioners is silent on that aspect of the matter. Therefore, the impugned decision of the respondent-Housing Board cannot be held to be *ultra vires* Regulation 23 of the Regulations."

I am in respectful agreement with the view expressed by this Court in the aforementioned case and consequently for the very same reasons, this writ petition shall stand dismissed. But, however, without costs.

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NOOTY RAMAMOHANA RAO,J

Date: 27.6.2007
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THE HON'BLE MR JUSTICE NOOTY RAMAMOHANA RAO

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[1] 2001 (1) ALD 193